

**STATE OF MINNESOTA**  
**IN COURT OF APPEALS**  
**A23-0179**



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Wells Fargo Bank, NA,

Respondent,

vs.

Brian D. Metzler,

Appellant.

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**ORDER OPINION**

Sherburne County District Court  
File No. 71-CV-22-1159

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Connolly, Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:**

1. In November 2007, respondent Wells Fargo Bank, NA (the bank) and appellant Brian D. Metzler entered into a credit agreement under which the bank issued an account and extended credit to Metzler; Metzler promised to repay the bank.

2. After Metzler failed to repay the bank, the bank filed a complaint against him. The bank asserted a breach-of-contract claim, alleging that Metzler's last payment made in 2021 did not satisfy the balance due. The second count alleged a claim for account stated.

3. Metzler moved to dismiss, claiming that the action should have been brought in federal court and that there was no enforceable contract. The bank moved for summary judgment. In opposing the bank's motion, Metzler claimed that he never entered into an

agreement and asserted that South Dakota law applied and Minnesota courts lacked jurisdiction to interpret South Dakota law.

4. The district court granted the bank's motion for summary judgment. The district court determined that it was undisputed that (1) the parties entered into an agreement; (2) the bank mailed statements to Metzler showing the balance due; (3) Metzler retained the statements and never disputed the amount due; and (4) the account had a balance of \$8,186.67. The district court concluded that there was a binding contract and Metzler "assented to the terms of the agreement by using the card at will." The district court stated that although the card was "unsolicited," Metzler "used the card and is now delinquent paying the balance."

5. Metzler now appeals the district court's grant of summary judgment. Summary judgment is appropriate when the moving party shows that "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "Summary judgment is inappropriate when reasonable persons might draw different conclusions from the evidence presented." *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019) (quotation omitted). We review the district court's grant of summary judgment de novo, *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017), looking at the evidence "in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

6. Metzler argues that the district court erred by accepting the facts as represented by the bank and copying the ruling the bank wanted. He also argues that there

was no signed contract. And he seems to suggest that the contract that the bank presented to the district court did not match the contract he agreed to. Finally, Metzler asserts that the agreement allowed him to accumulate rewards to redeem as cash to submit as payment but the bank refused to provide the rewards he earned.

7. Even viewing the evidence in favor of Metzler, we conclude that no genuine issue of material fact exists and the bank was entitled to judgment as a matter of law.

8. An enforceable contract requires an offer, acceptance, and consideration. *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008), *rev. denied* (Minn. Jan. 20, 2009). “Whether a contract is formed is judged objectively by the conduct of the parties, not by their subjective intent.” *Crince v. Kulzer*, 498 N.W.2d 55, 57 (Minn. App. 1993).

9. In demonstrating the existence of a contract, the bank showed the agreement and monthly statements. The agreement shows that the bank agreed to extend credit in exchange for Metzler’s promise to repay the debt accrued. Metzler admits that he used the card and he claims that the rewards he earned by using the card should be redeemable for payment on the balance. He just claims that because the card was unsolicited, he should not be liable for the debt. As the district court noted, Metzler could have ignored an unsolicited offer. And because he chose to open the account and use the card, he accepted the terms of the agreement.

10. Metzler did not provide evidence to refute the existence of the contract or point to any material terms preventing mutual assent, instead providing only conclusory denials of the contract’s existence. But the nonmovant cannot simply rely on “unverified

and conclusory allegations” to avoid summary judgment. *See Gradjelick v. Hance*, 646 N.W.2d 225, 230 (Minn. 2002). The undisputed evidence about the parties’ conduct demonstrates the existence of an enforceable contract. The district court’s grant of summary judgment to the bank was appropriate.

11. Next, an account stated is an agreement that may be express or implied, specific to the circumstances. *Meagher v. Kavli*, 88 N.W.2d 871, 880 (Minn. 1958). Proving an account stated does not necessarily require an express examination of the respective demands “or an express agreement to the final adjustment.” *Id.* at 881 (quotation omitted). If a party receives an account stated and fails to object to the charges, courts may imply mutual assent. *Id.*

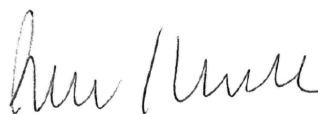
12. Metzler does not dispute the charges or the existence of the account stated. The bank showed evidence of Metzler’s payments to the bank. Because of the evidence of payments made, there is no genuine dispute over Metzler’s knowledge of the account and his duty to repay his debt. The district court appropriately granted the bank’s motion for summary judgment.

**IT IS HEREBY ORDERED:**

1. The district court’s order is affirmed.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: July 27, 2023

**BY THE COURT**



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Judge Renee L. Worke